

**Testimony of Lorray S.C. Brown
On Behalf of the Michigan Advocacy Project (MAP)**

**House Committee on Banking and Financial Services
Legislation to Amend PA 29-31 of 2009 to Extend the Sunset on the 90-day Mortgage
Modification Law and Reduce the Residential Redemption Period.**

Chairman Knollenberg and members of the House Committee on Banking and Financial Services, thank you for the opportunity to testify regarding the proposed legislation to extend the 90-day pre-foreclosure law and the reduction of the redemption period. I am Lorray Brown, the statewide foreclosure prevention specialist at Michigan Poverty Law Program.¹ Michigan Poverty Law Program is the statewide back-up center for legal services programs. I am here today on behalf of the Michigan Advocacy Project. The Michigan Advocacy Project (MAP) is a joint project between the Michigan League for Human Services (MLHS) and the Michigan Poverty Law Program (MPLP). MAP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

These bills present some concerns, such as 1) the role of the designated agent, 2) the requirement that the homeowner provide documents within 15 days; and 3) the broad inclusion of attorneys as persons who can perform the duties of housing counselors under Sections 3205A to 3205C. I'll elaborate on those issues later.

However, the significant issue presented by these bills is the reduction of the redemption period. On behalf of the Michigan Advocacy Project, we simply cannot support these bills with a reduction of the redemption period.

Section 3240(8) – Reduction of the Redemption Period to 3 months

In support of the reduction of the redemption period, the lenders argue that it is only fair to reduce the redemption period by 3-months since the homeowner is receiving 3-months on the front end by way of the 90-day pre-foreclosure process. This argument is without merit since the reduction of the redemption period is not tied to the sunset provision. This is a permanent reduction. After 2012, homeowners will not have the benefit of the 90-Day law on the front end or the benefit of a 6-month redemption period. Additionally, homeowners who do not opt-in the 90-day pre-foreclosure process also will lose 3 months of a redemption period. It has been reported that over 50% of the homeowners do not opt-in the 90-day process. Not only will this

¹ As the statewide foreclosure specialist, I run the Michigan Foreclosure Prevention Project, a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving all the major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.

be unfair to over half of the homeowners in this state, but it will be unfair to all homeowners after July 2012.

The purposes of the redemption period is to give homeowners a realistic period of time within which to seek alternative financing to pay the sale price and keep the home. The homeowner may also sell the property during the redemption period. With the benefit of a longer period to sell the home, the homeowner is much more likely to payoff the lender and potentially recovers any equity lost at the sale. The lenders argue that given the economic crisis, no one is able to get financing to redeem, homes are underwater so homeowners are not able to sell and there is no equity to recover. However, this all assumes that the economic crisis will be long term and the market will not turn around. With this proposed reduction of the redemption period, when the market does turn around, homeowners would be at a disadvantage when it comes to their redemption rights.

The lenders have long argued that Michigan has one of the longest redemption periods in the country. I refer you to the National Consumer Law Center's Report on the states and their foreclosure laws. <http://www.nclc.org/issues/state-foreclosure-laws.html> That report at pages 6-7 and 34-35, shows that Michigan falls somewhere in the middle as to length of redemption period. There are states with redemption periods ranging from 3 months to 2 years. Also, Fannie Mae foreclosure time frames show that Michigan's foreclosure time frames, when you add in the 6 month redemption period, are around the middle of the range of the 50 states. The Fannie Mae foreclosure time frames range from 60 days to 420 days. According to the Fannie Mae chart, Michigan's time frame is 60 days. The Fannie Mae chart goes by time to sale, so it does not include a post sale redemption periods. So if you add the 6-month redemption period to the 60 days in the Fannie Mae timeframe, Michigan is middle of the road for America and it would be an insane time to make it worse.

<https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/foreclosuretimeframes.pdf>

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1012.pdf>

At a time when most states and the federal government are developing policies to keep homeowners in their home, we have bills that will get homeowners out of their homes sooner.

The lenders also argue that a long redemption period prevents them from selling the home and homeowners are not redeeming. The lenders further argue that during the redemption period, the homes are deteriorating, being destroyed and losing value. No one has done empirical studies of how redemption laws affect home retention or whether redemption laws contribute to deteriorated or destroyed homes. The lenders' arguments about dire effects of redemption laws are not based on empirical studies, just anecdotes. The consumer advocates can similarly provide anecdotal information as to the positive outcome of a favorable redemption period. Any reduction of the redemption period because of these falsely perceived arguments will harm homeowners and will continue to wreak havoc on our neighborhoods.

By reducing the redemption period, the intent is clearly to get homeowners out of their homes sooner. This destabilizes neighborhoods because the homes now will be unoccupied and

may stay unoccupied for a long period. These bills head in the opposite direction of what is taking place nationally. Shortening the redemption period makes the problem worse, not better.

MAP therefore cannot support legislation that is aimed at having homeowners lose their homes at a faster rate and destabilize neighborhoods.

Section 3205(2) – The Designate Agent Is An Individual Authorized to Facilitate Negotiations and Attend Meetings

One of the concerns that the 90-day law was intended to address was the concern of not having a lender's representative who had the authority to enter into an agreement with the homeowner. As a result, the 90-day law specifically provided that the designated agent is someone with the authority to modify the terms of the loan. The intent was to have someone at the meeting who could make a decision at the meeting. The proposed change is contrary to the intent and spirit of the 90-day law. Instead of creating a positive duty on the party of the lender to have someone with authority at these meetings, the proposed section 3205(2) has simply made the designated agent "a meeting planner". The designated agent is now someone who schedules the meeting, shows up at the meeting, collects documents and tells the homeowner and the housing counselor, the lender will be in touch. This would be a complete waste of time and resources for housing counselors who are already overextended.

Section 3205b(2) – If the Borrower Doesn't Provide the Documents Within 15 days, the Foreclosing Party Can Foreclose

Recently, the Michigan Foreclosure Prevention Projection (MFPP) and the Michigan Foreclosure Task Force (MFTF) conducted a survey. The survey results seem contrary to what the lenders argue as to homeowners' failure to provide documents. While lenders and servicers have argued that significant numbers of homeowners do not provide documentation to assist the lender or servicer in considering a loan modification request under the 90-day law, the recently completed MFPP/MFTF survey of housing counselors and legal service providers reveals that homeowners are in fact providing the documents requested. Of the 70 survey respondents who answered this question, nearly 70 percent reported that lenders and servicers "fail to follow up with you or the homeowner after the initial meeting" at least half the time or more. In other words, for those who seek to utilize the 90-day law to resolve their delinquency and who provide documentation, lenders and servicers are often simply not responding. It appears the problem here is equally as a result of lenders not responding rather than homeowners not providing documents. Therefore, I think this provision is not necessary and may even create more of a problem because there will be times when homeowners legitimately cannot obtain all the necessary documents within 15 days.

Nevertheless, we have several concerns to this provision as drafted:

First, this provision effectively ends the process for the borrower if the servicer or the foreclosing party says that it didn't receive the documents. We hear from borrowers, housing counselors, and advocates in Michigan and around the country that they would send the documents to

servicers, and somehow the servicers report that they did not receive the documents. Borrowers and housing counselors reported having to send the same documents to servicers numerous times. Given that the borrower will lose the opportunity to participate in the 90-day process when the foreclosing party says that they didn't receive the documents, we should try to ensure that there is some proof of the documents being sent. Perhaps we can add language that defines the documents being sent by proof of certified mail receipt, federal express receipt, a fax transmittal report that says that the document was successfully sent, or an e-mail that was not returned or bounced; etc. We may even consider adding language that encourages the use of web portals. Some states that have implemented pre-foreclosure mediation programs are starting to use web portals to submit documents. The web portals would eliminate disputes over whether documents were sent and received.

Second, to avoid ambiguities as to when the 15 day begins to run, I suggest clarifying how the request is being made, to whom, and proof that the request was actually made. Section 3205b(2) states the borrower shall provide the documents "within 15 business days after the request for the documents." It should be clear that the request, whether coming from a designated agent or a servicer, should be a written request, not a verbal request. Also, it should be clear that the written request must be sent to the homeowner and housing counselor (if there is one working with the homeowner) by regular first class mail and by certified mail, return receipt requested. Also the 15 days runs from the date of the letter. To avoid further confusion, it should be clear in the letter who gets the documents. Housing counselors and homeowners reported that at times when the homeowners sent the documents to servicers not the designated agents, the designated agents would consider that as not having received the documents.

Third, "the documents requested" – To avoid confusion, there should be a list of the documents that are being requested? We are concern that since each servicer creates its own list of required documents, a servicer could say that the borrower did not provide the documents in cases where the borrower provides the documents but might have missed a document that is unique to that particular servicer.

Finally, upon further reflection, this provision might create a two tier system for producing the documents, e.g. 1) servicers complying with HAMP and 2) non-HAMP servicers. Also this provision seems to be in conflict with HAMP. This provision allows the servicer to foreclose if the servicer did not receive the documents in 15 days.

This provision is in direct conflict with the HAMP program rules that are still binding for about 90% of loans in foreclosure. The HAMP guidelines in Handbook Ch. II at sec. 2.3.2 require specific non approval notices for not providing documents over a time frame that is not consistent with the language in this provision. Under Handbook section 2.2.2 the borrower is supposed to get 15 days to send in documents in response to an initial solicitation, then a 15 day follow-up reminder if they did not submit the application. Then section 2.3.3 has very specific requirements for notices for failure to provide a necessary document. There is a requirement for a 30-day notice describing the specific document not sent on time, then, if not received in 30 days, an additional 15 day notice to send in the missing documents. I read all this as setting about 75 days time from when a servicer first sends the notice to apply for HAMP (the initial document request) until it can proceed to foreclose based on incomplete documentation. So it seems

highly problematic that a state law would tell servicers who signed contracts to abide by HAMP guidelines that they can go ahead and foreclose 15 days after they claim something is missing from an unlimited document request. The overwhelming majority of loans in foreclosure today are covered by the HAMP rules.

Section 3205d - the requirement that persons who are not on the MSHDA housing counselors list cannot perform the duties under Sections 3205A to 3205C.

I appreciate this provision as an effort to combat the loan modification scammers preying on vulnerable homeowners. Also, in an earlier comment on a draft, I noted that this effort might inadvertently include legitimate persons who also participate in this 90-Day pre-foreclosure process. In addition to housing counselors on the MSHDA list, legal services attorneys, who are not on the MSHDA list, also perform the duties under these sections. In an effort to incorporate my suggestion, the section 3205d(2) now provides:

A person who is not an attorney or on the list of housing counselors developed under this section shall not perform the duties of housing counselor under sections 3205A to 3205C.

With the inclusion of “attorney”, this section might inadvertently exempt some loan modification scammers. It is my experience that some loan modification scammers are actually attorneys whose primary businesses are loan modification consultants.

Thank you.

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